



Lamoine Board of Selectmen

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Minutes of September 11, 2014

Chair Gary McFarland called the meeting to order at 7:00 PM

Present were: Selectmen Nathan Mason, Heather Fowler, Gary McFarland, S. Josephine Cooper, Bernie Johnson (arrived at 8PM); Administrative Assistant Stu Marckoon, Bruce Gillett, Kathleen Rybarz, Steve Salisbury, Brian Hubbell, Code Enforcement Officer/Assessor Michael Jordan, Planning Board chair John Holt, Assessor Jane Fowler, Carol Korty, John Jerabek, Comprehensive Planning Committee members Kathryn Gaianguet and Valerie Sprague.

Agenda Review – No changes were proposed to the printed agenda or addendum.

Minutes of August 14, 2014 – Heather moved to approve the minutes with two minor changes. Nathan 2nd. **Vote in favor was 4-0.**

Expenditure Warrant 5 – Selectmen signed the warrant in the amount of \$475,793.77. Stu said \$350,000 was a transfer into investments and about \$80,000 was for school related expenses.

Expenditure Warrant 4 – Stu noted the Selectmen signed the warrant individually in between meetings. There were no questions about the warrant.

Cash & Budget Reports – Stu noted that he included a cash flow report that he had also sent to the bank for investment use. Jo said the report was useful.

Checking Account Reconciliation – Selectmen signed the form expressing satisfaction with the checking account reconciliation which had been e-mailed to them the previous week.

Contract with Haslam Septic regarding septage capacity – Stu noted the town is required to have an agreement in place for the capacity to dispose of septage. He said this was a 3-year renewal with Haslam Septic. Jo moved to approve, Nathan 2nd. **Vote in favor was 4-0, Selectmen signed the contract.**

MMA Insurance Dividend Check – Stu reported the insurance carrier left a check for over \$800 for workers compensation and property and casualty which he has booked as a negative expense.

Cyber Security Insurance – Stu said the town does not capture personal information and he didn't think this insurance coverage was needed. No action was taken.

Response to Friends of Lamoine – On a motion from Nathan and a 2nd from Heather, and a 4-0 vote in favor, Selectmen signed a response to a letter received in July from a group calling itself Friends of Lamoine.

Animal Control Officer Resignation – Gary reported the Michael Arsenault submitted a letter of resignation stating that he is no longer physically able to perform the job of animal control officer. Jo moved to accept the resignation, Heather 2nd. **Vote in favor was 4-0.**

Appointment of Interim Animal Control Officer – After much discussion about appointing an interim officer, and whether an interim needed to become certified immediately, Heather nominated Stu Marckoon to the post, to which he reluctantly agreed to fill until such time as a new ACO is hired. Gary 2nd. **Vote in favor was 4-0.**

Planning Board – Possible Vacancy – Planning Board chair John Holt reported that Charles Weber does not seem to have the interest in serving as an alternate member of the Planning Board and has missed 8-straight meetings. Stu said he had drafted a letter to Mr. Weber that asks him to either meet with the Selectmen, or if he chooses not to meet, that would be considered his resignation from the position. Jo moved to send the letter. Gary 2nd. **Vote in favor was 4-0.**

Conservation Commission Appointments – Jo moved to appoint current Conservation Commission alternate member Linda Penkalski to fill the vacancy created by Carol Korty's resignation. Nathan 2nd. **Vote in favor was 4-0.**

Nathan moved to appoint Larissa Thomas as an Alternate member of the Conservation Commission to fill Linda Penkalski's position. Jo 2nd. **Vote in favor was 4-0.**

Budget Committee Resignation – Jo moved to accept the resignation of Kathleen DeFusco from the Lamoine Budget Committee with regret, noting she has been a great presence on the committee. Heather 2nd. Nathan asked about the process of replacing her. Stu suggested that the Board inquire of Connie Bender whether she would be interested in serving as the full member instead of the alternate, and advertising for an alternate member if the answer were yes. There was no objection to the replacement plan. **Vote in favor was 4-0.**

Returnables Request – Jo moved to award the proceeds from the returnables at the Lamoine Transfer Station to the Lamoine/Bayside Grange in January 2015. Nathan 2nd. **Vote in favor was 4-0.**

Vacation Request – Stu said he would like to take a short vacation between September 18, 2014 and September 23, 2014. There was no objection.

Building & Land Use Ordinance Amendment Request – Code Enforcement Officer (CEO) Michael Jordan suggested two changes to the ordinance in Section 10, adding the word "consecutive" to the section regarding a permit for Recreational Vehicle placement. He noted that while it had been the practice for the town to require a permit only for RV's occupied for more than 30-consecutive days, the ordinance does not read consecutive and some are interpreting to mean cumulative days. He noted there is an appeal that has been filed in this regard.

Jo asked how to proceed. Stu said he could draft up the language in the form of a warrant article ordinance change, it could be forwarded to the Planning Board which should hold a hearing prior to finalizing the question, and then it would be put before the town meeting. Jo moved to direct the Administrative Assistant to draft the changes suggested by the Code Enforcement Officer and present them to the Planning Board. Nathan 2nd. **Vote in favor was 4-0.** A brief discussion followed as Planning Board chair John Holt questioned who was recommending the change, as well as what was meant by RV's (campers and motor homes, etc.).

Request to use town attorney – Planning Board Chair John Holt said he sent an e-mail on August 21, 2014 in response to an e-mail he had received from Stu requesting more rationale to his request to use the town attorney. He read a portion of the e-mailed response

Jo said the request seems reasonable. Nathan asked about the other part of the original request which was for asking for a consultation on a lawsuit brought against the town. Rev. Holt said he and Planning Board member Gordon Donaldson were named, but Stu had informed them the town was the defendant, and if the suit were against individuals, it would be referred to the insurance carrier under the public officials liability insurance policy.

Gary recapped the request, asking if it was to speak with the town attorney to clarify the appeals steps in the Site Plan Review Ordinance. Rev. Holt said they need clarification on the appeals process to formulate a response to the appeal by Harold MacQuinn, Inc. Stu said he has some hesitation about that because it potentially leads to the town attorney representing the town against itself and it can become confusing.

CEO Jordan asked why the Planning Board would be responding to the Board of Appeals instead of having an attorney to represent the Planning Board. He said the Planning Board has had a lawyer handle the Planning Board cases before. Nathan said it seems to be placing the cart before the horse. CEO Jordan said the case is presently in Superior Court awaiting a decision.

Jo said it should be a very brief question and it would be useful to know the answer. Heather asked who is giving an interpretation to the Board of Appeals. Rev. Holt explained that the Planning Board had denied the request from MacQuinn to expand the gravel permit and the appeal filed disputes that decision and contends that the Appeals Board can hear the case "de novo". He confirmed the case is in Superior Court and the Appeals Board is waiting for a decision. He said the Appeals Board has to determine whether the case will be a de novo hearing or not. He said the Planning Board was left "sitting there" on the last Appeals Board case. He said they would like to have a clear ruling on what Section "M" means.

Heather said it sounds like it should be the Board of Appeals asking for the opinion. Rev. Holt said this is an invitation to respond to why the appeal is mistaken on the de novo matter. Jane Fowler said someone from the Board of Appeals ought to be heard on this – the Selectmen are only hearing one side

Carol Korty said the community voted in the ordinance, and the Appeals Board does not have the authority to start an application over again. She said she doesn't see this as being the Appeals Board vs. the Planning Board. Rev. Holt said the appeal filed was on the Site Plan Review Ordinance, not the Gravel Ordinance. Kathryn Gaianguest said the Planning Board needs to know what the Appeals Board response to the question will be in order for the Planning Board to make a response. CEO Jordan noted the Appeals Board has tabled the matter until the court case is resolved.

Nathan said he did not think the appeal would be a de novo situation. Jo said she didn't see any harm in asking the attorney the question. Nathan said it's a procedure question. He said the Appeals Board should be asked for clarification. Rev. Holt said the only problem is that if the Board of Appeals doesn't ask for legal help, the Planning Board has no standing to. Ms. Gaianguest said it's not just a Planning Board issue but a citizen issue to know if the Board of Appeals can act with a de novo hearing. She said a citizen has no recourse if the Board of Appeals chooses not to ask for legal help.

Stu said the Board of Appeals meets on October 1, 2014. Gary said it appears that the Planning Board wants to know if the Board of Appeals can hold a de novo hearing on the Site Plan Review Ordinance appeals. Rev. Holt said the Planning Board just wants to know the scope of the appeal in Section M. He said it get complicated and he would like to have the town attorney interpret. Heather asked if the decision has already been made. Rev. Holt answered that it has not – the appeal is of a Planning Board decision. He said they would be glad if a legal interpretation were made somewhere in the process.

Nathan said he was not convinced that the Planning Board should be asking the town attorney – it should be up to the Board of Appeals to decide whether it should ask the attorney. Jo said the Board of Appeals must be respected and she can understand the concern, even though the cost is minor. Nathan said the citizens seem to be concerned about a Board of Appeals decision that hasn't happened and said there seems to be a pre-judging of a Board action.

Stu suggested that maybe the Planning Board should ask the Board of Appeals for clarification of the de novo hearing issue and the Board of Appeals could request permission from the Board of Selectmen to use the town attorney for an answer. Rev. Holt said he would craft the question for the Board of Appeals the next day.

Request of Steve Salsbury on behalf of John Goodwin Jr. & Harold MacQuinn, Inc. to install wells to come into compliance with the Gravel Ordinance. – Nathan said he found the request confusing. Bernie asked if the pit owners wish to dig test wells. Mr. Salsbury said that was partially correct. He explained that he wanted the Planning Board to approve monitoring plans for the consent agreements; that he had put a plan together and presented it at the September meeting, and had a geologist present, but the Planning Board said it could modify the consent agreement because that was between the pit owners and the Selectmen. Bernie asked if the Planning Board had given the pit owners any sense that the pit owners were moving in the right direction

Rev. Holt said the Planning Board was operating on the assumption that the agreement is binding on the town, and asked why the Planning Board would wrestle with the request. He said the Planning Board was not happy with the consent agreement superseding the ordinance. He said they did not get into the substance of the proposal. He said five other pits have supplied data which the Planning Board has accepted based on testimony from the engineer. He said the Planning Board was flexible and has the authority to amend application requirements. He said well installation is not a performance standard, but an application standard. He said the Planning Board granted the permits with a 6-month extension and now there is a consent agreement that cannot be tampered with. He said if the consent agreement were dispense with, it's another ballgame. A lengthy discussion followed on the possibilities for consent agreement modifications).

Nathan said he did not see where the consent agreements limit the ability of the Planning Board to find that a monitoring plan is acceptable. He said he would be under the assumption that the pits would be in compliance with what is in place by May 1, 2015. Bernie said the pit owners may have seen an opportunity to get closer to compliance, and if the proposal is to dig more test wells, he would say get to it.

Rev. Holt said he wouldn't want to change the consent agreement until the next step is possible. Mr. Salsbury said the agreement does not prohibit his clients and the Planning Board from working together to make the pits compliant. Gary said it sounds to him like the Planning Board could talk to Mr. Salsbury without it being a legal issue. Rev. Holt said the Planning Board does not have the right to move under the consent agreement and they are being asked to change the application provisions. Heather said this sounds like malicious obedience – the Planning Board does not seem to like to work with the pit owners.

Gary asked if the pits were proposing to drill wells and asking the Planning Board if this would be in compliance. Nathan asked if the proposal is less than what the ordinance requires. Mr. Salsbury said yet. Nathan said the consent agreement does not change the ordinance. He said the Planning Board could accept or deny the water monitoring plan, and if both sides are agreeable, that could quash the consent agreement.

Rev. Holt said if it could be made clear to the applicants and the Planning Board that if they agree on a water monitoring plan and the consent agreement could be dropped, that would be helpful. He said he would like some clarity that there is room for the Planning Board to be flexible in the application requirement that would meet the spirit of the water protection requirements. Jo said if they could do that, the Planning Board could come to the Selectmen and the Selectmen could set aside the consent agreement. She said it's hard to do that until that happens. Mr. Salsbury said he didn't think there needed to be any change to the consent agreements to allow that. He asked if the Selectmen would allow attorneys Pileggi and Bearor to work on it. Nathan said the goal was to get everyone in compliance. Rev. Holt said that is his goal as well.

Nathan moved to authorize town attorney Pileggi and applicant attorney Bearor to review the consent agreement to determine whether any change is needed to allow the

applicants to propose a modified water monitoring plan to be found acceptable by the Planning Board, and if such a change is needed to draft said change, and if now, inform the Selectmen that the applicant and Planning Board may work on coming to an acceptable agreement. Bernie 2nd. **Vote in favor was 5-0.**

Planning Board Workshop – The workshop on the gravel ordinance will be Wednesday, September 17 2014 at 6:30 PM. Rev. Holt noted the Selectmen are in the process of writing a draft ordinance, and some matters in the current ordinance do not seem to be clearly understood and the Planning Board might be able to offer assistance, if desired. He said there are a couple of other issues to take up at the workshop. He said the workshop was initially construed as an invitation for the Selectmen to meet with the Planning board, but it's not necessarily that. He said the offer for assistance is there.

Gravel Ordinance Draft 1 – Jo said she had looked it over. Gary said the Selectmen have not discussed the water monitoring goals. It was requested to get copies of the report from the Gravel Work Group. While those were being printed, the board moved on to other matters.

Seal Point Road – Road Work – Stu reported that a mound had formed on John Jerabek's lawn from snow plowing and it should be removed. There was a brief discussion with Mr. Jerabek about the situation. Bernie moved to hire Richard McMullen to address the mound. Nathan 2nd. **Vote in favor was 5-0.** A brief discussion followed on making plowing residual issues a case by case basis.

Berry Cove Road Grading – Stu reported the mail delivery person had requested that the Berry Cove Road be graded, and he checked, and it could use it. Nathan moved to assign this task to Perry Fowler. Gary 2nd. **Vote in favor was 4-0 (Fowler abstained).**

Municipal Review Committee- Stu said the Select Board was e-mailed a letter from several Argyle area residents concerned about a proposed landfill in their area. He said the Selectmen had supported exploration of other options by the Municipal Review Committee but did not specifically endorse a landfill. He said he did not believe a response was needed.

There was no interest in submitting a nominee to the MRC Board of Directors.

Brownfields Grant Application – Stu said he would like to pick Tom Martin's brain at the Hancock County Planning Commission for possibilities on what to do at the former landfill. There was no objection.

Gravel Ordinance Draft 1 – Continued – There was a lengthy discussion about what would be done with the test data, the goals of water testing, what public health concerns there might be from gravel mining, and testing residential wells instead of wells within the gravel pits. There was also a discussion about spills and the effects of contamination.

The Selectmen agreed that separation monitoring requirements would stay, and that the water quality monitoring wells should be one for every 5-acres of working and/or unrestored area. Proposals would be included to address data storage and retention.

Other Matters – Gary noted that on September 18, 2014 at 4PM there would be a little children's group meeting.

CEO Jordan said he was concerned that he found a new website for the Friends of Lamoine and that two members of the Comprehensive Planning Committee were listed as belonging to the group. He suggested the Selectmen visit the website, and it looks like 28% of the Comprehensive Planning Committee is against gravel pits. He said he didn't believe there are enough people on the Comprehensive Planning Committee, and there should be a selectperson on the committee. Nathan said the members of the Comprehensive Planning Committee have a right to their opinions. Jo said it's a free country.

MMA Convention Voting Delegate – None of the Selectmen had plans to attend the convention. Stu said he was not able to get to it this year.

Next Meetings – The next meeting of the Board of Selectmen will be September 25, 2014. Selectmen said they would discuss 2nd meeting dates for November and December (as the regular 2nd meeting would fall on Thanksgiving and Christmas Days), at a later date.

Traffic Light – Heather asked about the status of the traffic light in Trenton. Stu said it was still on track as far as he know. There was a discussion about a motorcycle accident at the intersection the previous night and that a traffic light would likely have prevented that. State Representative Brian Hubbell said he would try to find out about an update.

There being no further business, the meeting adjourned at 9:50 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen